

FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:

Apply to all applications and patents, whenever filed

Chart I: For U.S. patent or U.S. patent application publication under 35 U.S.C. § 122(b) (includes publications of § 371 applications)

Is the reference a U.S. patent or U.S. application publication of an International Application (IA)?
(look for "35 U.S.C. § 371" on the reference, which would indicate National Stage was entered)

Yes

No

**§ 371
(National
Stage)**

Was the IA filed on or after Nov. 29, 2000?
- look at the international filing date

Yes

No

Was the WIPO
publication of the
IA in English and
did the IA
designate the
U.S.?

Yes

No

For a patent and a
U.S. application
publication: § 102(e)
date is the
**international filing
date** or an earlier
filing date for which
a benefit is properly
sought*
Form Paragraph 7.12

For a patent and a U.S.
application publication: **no
§ 102(e) date**
Reference is prior art as of its
publication or grant date under
§ 102(a) or (b)
Form Paragraph 7.08 or 7.09

For a patent: § 102(e) date is
the § 371(c)(1), (2) and (4) date
Form Paragraph 7.12.01
For a U.S. appl. publication:
no § 102(e) date
Reference is prior art as of its
publication date under § 102(a) or (b)
Form Paragraph 7.08 or 7.09

**Benefit claim to
an IA (§§ 120 or
365(c))**

Was the IA filed on or after Nov. 29, 2000?
- look at the international filing date

Yes

No

Was the WIPO publication
of the IA in English and
did the IA designate the
U.S.?

Yes

No

For a patent and an
application publication:
§ 102(e) date is the
**international filing
date** or an earlier date
for which a benefit is
properly sought*
Form Paragraph 7.12

For a patent: § 102(e) date is the
§ 371(c)(1), (2) and (4) date; or § 111(a)
filing date if the IA never entered national
stage.
Form Paragraph 7.12.01
For a U.S. application publication: §
102(e) date is the filing date of the U.S.
application that claimed benefit to the IA
Form Paragraph 7.12

For a patent and a U.S.
application publication:
§ 102(e) date is the filing date
of the U.S. application that
claimed benefit to the IA
Form Paragraph 7.12

Is there an IA in the continuity chain for which a
benefit is properly sought via §§ 120 or 365(c)?

Yes

**No IA
involved**

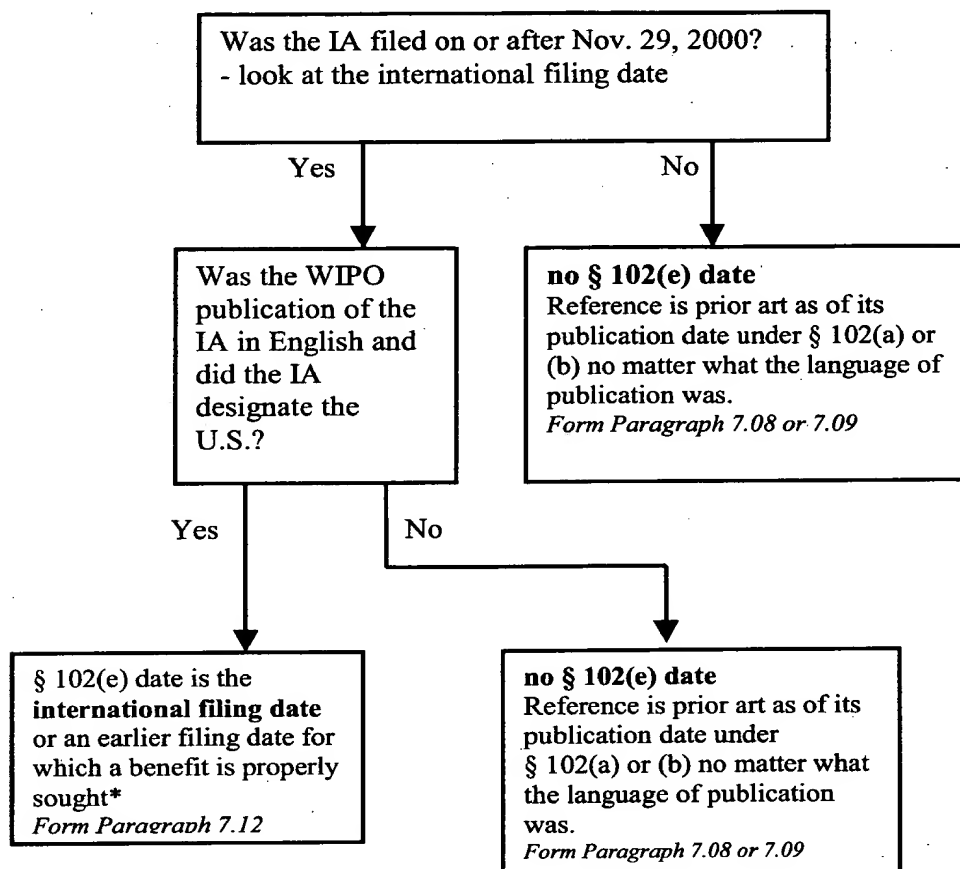
No

The reference was filed under § 111(a) and
only claims benefit to other U.S. applications
filed under § 111(a) or (b) or does not make
any benefit claims.
The § 102(e) date of the reference is the
earliest U.S. filing date for which a benefit is
properly sought via §§ 119(e) and/or 120 (do
not consider foreign priority claims under
§§ 119(a)-(d)). *Form Paragraph 7.12*

* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.



FLOWCHARTS FOR 35 U.S.C. § 102(e) DATES:
Apply to all applications and patents, whenever filed
Chart II: For WIPO publication of International Applications (IAs)



* Consider benefit claims properly made under § 119(e) to U.S. provisional applications, § 120 to U.S. nonprovisional applications, and § 365(c) involving IAs. Do NOT consider foreign priority claims.

Glossary of Terms:

U.S. patent application publication = pre-grant publication by the USPTO under 35 U.S.C. § 122(b)

International application (IA) = an application filed under the Patent Cooperation Treaty (PCT)

§ 371 application = an IA that has entered the national stage in the U.S. (35 U.S.C. § 371(c)(1), (2) and (4))

November 29, 2000 = the effective date for the amendments to §§ 102(e) and 374

WIPO = World Intellectual Property Organization

WIPO Publication = a publication of an IA under PCT Article 21(2) (e.g., Publication No. WO 99/12345)

§ 111(a) = provision of the patent code that states the **filing** requirements for **nonprovisional applications**

§ 111(b) = provision of the patent code that states the **filing** requirements for **provisional applications**

§ 119(e) = provision of the patent code that allows for **priority claims to provisional applications**

§ 119(a)-(d) = provision of the patent code that allows for **priority claims to foreign applications**

§ 120 = provision of the patent code that allows for **benefit claims to nonprovisional applications**

§ 365(c) = provision of the patent code that allows for **benefit claims to international applications**